IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Bail Appl..No. 7757 of 2006()

CRIME NO. 167/06 OF KULATHUPUZHA POLICE STATION

APPLICANT

JOSH.R., R.R.BHAVAN,
ETTINKADAVU, KADAKKAL P.O.

BY ADV. SRI.ALAN PAPALI
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. C.B.I. REPRESENTED BY SUPERINTENDENT
OF POLICE, C.B.I., ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE
SRI.S.SREEKUMAR, SC FOR CBI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON 18/01/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Bail Application No. 7757 of 2006

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Dated, this the 18th day of January 2007

O R D E R

The petitioner who is the 2nd accused in Crime No. 167/06 of Kulathupuzha Police Station and now pending as Crime No. 282/CR/KLM/06 before the CBCID, Kollam, for an offence punishable under Sec. 376 I.P.C. seeks anticipatory bail.

2. The learned Public Prosecutor opposed the application and made available to me for perusal the case diary files relating to the matter.

3. Eventhough the learned counsel for the petitioner persistingly submitted that the petitioner who is the conductor of a private bus by name "Aayiliam" had nothing to do with the alleged rape of the victim and that it was the Ist accused Anilkumar who is the paternal uncle of the girl who has been committing rape on her, I am inclined to accept the above contention of the petitioner. 15 year old Divya was befriended to the petitioner who is the conductor in "Aayilliam" bus in which the girl was going to school everyday. He was in the habit of cracking jokes to win her heart. The girl soon developed an intimacy with the petitioner who took her to an

uninhabited house in the morning hours on 28-7-2006 and 31-07-21006 and satiated his lust in the girl who was infatuated by the rosy promises given by the petitioner. Since the girl is below the age of consent, her willingness or co-operation for the prurient ventures of the petitioner cannot make the bodily trespass committed by him anything other than rape. Anticipatory bail cannot be granted in a case involving such grave offences. There is no reason why the petitioner should not surrender before the Magistrate and seek regular bail. Accordingly, if the petitioner surrenders before the Magistrate and files an application for regular bail within two weeks from today, the same shall be considered and disposed of preferably on the same date on which it is filed.

With the above observation, this petition is dismissed.

Sd/-V. RAMKUMAR,
(JUDGE)

ani.

/true copy/

P.A. to Judge.